IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 22827 of 2003

Between:

Syed Farruq s/o. Syed Rukuuddin
Near Bhadrappa Well, Uravakonda,
Anantapur Dist.

..... PETITIONER

AND

1 The Commissioner School Education, Govt.of A.P., Hyderabad
2 The Dist.Education officer, Anantapur, Anantapur Dist.
3 The Correspondent Aided Arabic High School, Uravakonda, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction particularly one in the nature of writ of Mandamus declaring the action of the respondent in not releasing the salary to the petitioner appointed as S.G.Assistant (Urdu) on Compassionate Grounds as arbitrary and bad in law. Further order the Respondents to pay the salary in the scale attached to the post appointed vide proceedings Rc.No.1/Compassionate Appointments/2001 dt. 4-10-2001.

Counsel for the Petitioner:MR.P.SRINIVASULU

Counsel for the Respondents 1 and 2: GP FOR SCHOOLEDUCATION

Counsel for respondent No.3: None appeared.

The Court made the following :

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O R D E R:

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The facts of the case in brief are that the father of the petitioner who served as S.G.Assistant in the 3rd respondent Institution died on 23.01.2000. After the death of his father, the petitioner was given appointment on 04.10.2001 as S.G.Assistant (Urdu) in the existing vacancy on compensatory grounds in the pay scales attached to the posts in terms of G.O.Ms.No.1, dated 01.01.1994. The petitioner joined in the institution on 10.10.2001. From the date of joining, the petitioner is serving in the 3rd respondent Institution without any salary. As salaries were not released to the petitioner, he made a representation, dated 08.07.2003 before the 2nd respondent-District Educational Officer, Anantapur, stating that ever since the date of appointment, i.e.,10.10.2001, he is working as S.G.Assistant (Urdu) in the Aided Arabic High School, Uravakonda, without any pay for the past twenty months and he is unable to eke out his livelihood without any salary paid by the authorities and requested to consider his request on humanitarian grounds and take necessary steps to release his salary, since he is finding it difficult to feed his family. In spite of the representation made by the petitioner, no action was taken by the respondent authorities to release salary to the petitioner. Hence, this writ petition is filed seeking to release salary to the petitioner from the date of his appointment i.e., 04.10.2001.

On 30.10.2003, while admitting the writ petition, this Court granted interim direction, directing the respondents to consider the case of the petitioner for fixing the pay in the cadre in which he is working, as per law, within a period of two months from the date of receipt of a copy of that order. As the said order is not complied with, the petitioner filed C.C.No.926 of 2004. On 30.07.2004, notice before admission was granted in the contempt case. Pursuant to the notice issued in the contempt case,

the 1st respondent-Commissioner of School Education, Hyderabad passed an order in Rc.No.667/53, dated 09.01.2004, stating that as per the orders issued in G.O.MS.NO.155, Education (services-4), Department, dated 24.11.2000, the petitioner has to be appointed in the non-teaching post, but he was appointed by the Correspondent as S.G.Assistant (Urdu), against the orders of G.O.Ms.No.155, dated 24.11.2000. It is also stated in the order, dated 09.01.2004 of the Commissioner that at the time of appointment of the petitioner, the provisions contained in G.O.MS.NO.30, dated 01.02.1994 are not in existence i.e., appointment in teaching posts on compassionate grounds. Therefore, the appointment of the petitioner by the Correspondent is not in accordance with the rules set forth and thereby the respondent authorities rejected the case of the petitioner to release grant in aid to the post held by him.

The learned counsel appearing for the petitioner submits that the said order of the Commissioner and Director of School Education is illegal, arbitrary and un-sustainable and it has no application to the case of the petitioner, for the reason that the provisions contained in G.O.MS.NO.30, dated 01.12.1994 are not in existence at the time of joining of the petitioner. The orders in G.O.MS.NO.155, Education (SER.IV) Department, dated 24.11.2000 will operate in respect of the dependants of the deceased employees, who died after 24.11.2000. It is also submitted that in the present writ petition, the father of the petitioner died on 23.01.2000 i.e., prior to the issuance of G.O.MS.NO.155, dated 24.11.2000.

From the proceedings, dated 04.06.2002 issued by the District Educational Officer, Anantapur, it is seen that under the powers vested in G.O.MS.No1 and (PS2) Department, dated 01.01.1994, the District Educational Officer, Anantapur is pleased to approve the appointment of the petitioner as S.G.Assistant (Urdu) Arabic High School, Uravakonda in the Aided Post with effect from 10.10.2001, who was appointed on compassionate grounds subject to the condition that salaries will be

released to the post held by the petitioner only after obtaining concurrence from the Commissioner and Director of School Education, A,.P., Hyderabad, as he is the grant releasing authority.

It is not in dispute that G.O.MS.NO.612, dated 01.02.1994 deals with the scheme of compassionate appointment to the dependents of the deceased employees. As per Clause 2 (iv) of the said G.O., it is seen that if the dependants of the deceased are eligible to be considered for any category of post, whose pay is equal or less than that of Jr.Assistant (L.D.C) and if they satisfy the qualifications and physical standards prescribed for such posts, they can be considered for posts such as, police constables in Home Department, Helper Grade-I & II in Forest Department, Leading Fireman/Fireman in Fire Service Department, etc. In any case, no dependent of the deceased Government employee possessing higher qualifications prescribed for the posts specified and the qualifications prescribed for the said posts, shall be considered for appointments to the specified posts carrying higher scale of pay attached to it. It is also not in dispute that by virtue of the amendment made to G.O.MS.NO.30, Education, dated 01.02.1994, the existing para (2) of G.O.MS.NO.30, Education Department, dated 01.02.1994 is substituted as follows:

> " Government after careful examination hereby order that except the concessions as items iv, v,vii & viii of G.O.MS.NO.612, General Administration (Ser.A) Department, dated 30.10.1991, all other concessions ordered in the aforesaid G.O. are extended *mutates-mutandis*, to the employees of Aided Schools."

Admittedly, the petitioner is entitled to be appointed to the non-teaching post as per the scheme of compassionate appointment. G.O.MS.NO.612, dated 30.10.1991 is applicable to the aided schools also by virtue of G.O.Ms.No.30, dated 01.02.1994, which extended the benefits of G.O.MS.NO.612, dated 30.10.1991, except the concessions made in items iv,v,vi & viii of the said G.O. Hence, I am of the opinion that the law that is prevailing as on the date of considering the application of the

petitioner alone is applicable to the case of the petitioner.

In view of the aforesaid reasons, I am of the view there is no Law authorizing the Correspondent either to appoint the petitioner in a teaching post or approving the said appointment by the District Educational Officer to the said post. I am also of the opinion that the Commissioner & Director of School Education vide order, dated 09.01.2004 has rightly rejected the release of grant- in-aid to the post of the petitioner, as the appointment of the petitioner as S.G.Teacher is not in accordance with the orders of the Government in G.O.MS.NO.155, Education (SER.IV) department, DATED 24.11.2000. I do not see any merit in the writ petition.

At this stage the learned counsel for the petitioner submits that as the Commissioner & Director of School Education, vide order, dated 09.01.2004 opined that the petitioner is only entitled to be appointed in a non-teaching post and as the Management has appointed the petitioner in the teaching post and his appointment is made contrary to G.O.MS.NO.155, dated 24.11.2000, his appointment may be treated as non-teaching post and release grant-in-aid to the post held by the petitioner from the date of his appointment and direct the authorities to release grant-in-aid.

Taking into consideration the above facts and circumstances of the case, it is made open for the petitioner to file a representation before the 3rd respondent Institution and work out his remedies to get salaries from the 3rd respondent-School for the period, which he has worked and on receiving such an application, the respondent authorities are directed to consider the representation of the petitioner and appoint him in a non-teaching post, if he is eligible. If it is found that the petitioner is eligible for the non-teaching post, the District Educational Officer may consider the case of the petitioner by approving the post of the petitioner as non-teaching post and consequently, the Commissioner may also release grant-in-aid in a non-teaching post.

With the above observations, the writ petition is dismissed. No order as to costs.

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V.ESWARAIAH.J

10.11.2004

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ASSISTANT REGISTRAR

To

1 The Commissioner School Education, Govt.of A.P., Hyderabad
2 The Dist.Educational Officer, Anantapur, Anantapur Dist.
3 The Correspondent, Aided Arabic High School, Uravakonda, Ananthapur District.

4. 2CCs to the G.P. for School Education, High Court of A.P., Hyderabad (OUT)

5. CD copies